

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,

Plaintiff,

v.

JOHN DOE, subscriber assigned IP address  
73.225.38.130,

Defendant.

Case No. 2:17-cv-01731-TSZ

**JOINT STIPULATED PROTECTIVE  
ORDER REGARDING SOURCE CODE**

NOTE ON MOTION CALENDAR:  
July 3, 2019

JOHN DOE, subscriber assigned IP address  
73.225.38.130,

Counterclaimant,

v.

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,

Counterdefendant.

1 Plaintiff, Strike 3 Holdings, LLC, Defendant John Doe, a subscriber assigned IP address  
 2 73.225.38.130, and Third Party GuardaLey, LTD, a German company, and the exclusive owner  
 3 of certain computer source code, the production of which is sought by Defendant in this case,<sup>1</sup>  
 4 by and through their undersigned counsel, hereby stipulate and agree to the entry of the  
 5 following Stipulated Protective Order Regarding Source Code.

# **STIPULATED PROTECTIVE ORDER REGARDING SOURCE CODE**

7 1. All Litigation Material designated or reflecting CONFIDENTIAL SOURCE CODE  
 8 — ATTORNEYS' EYES ONLY INFORMATION, as defined below, shall be used solely for  
 9 the purposes of preparation, trial and appeal of this "Action" as identified in the above caption  
 10 and for no other purpose, absent further order of the Court. While nothing herein shall prevent or  
 11 in any way limit disclosure, use, or dissemination of any document, thing, or information that is  
 12 in and obtained from the public domain sources, no line or lines of Source Code disclosed in  
 13 connection with this Protective Order may be publicly disclosed nor may any party receiving any  
 14 CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY INFORMATION under  
 15 this Protective Order ("Receiving Party") take any action before any tribunal to designate any  
 16 portion of any such Source Code received under this Protective Order as public domain whether  
 17 the Receiving Party or its Qualified Consultant or Qualified Expert believe any such portion or  
 18 line of Source Code is derived from or is in fact a part of the public domain.

19 2. "Source Code" shall mean source code and object code. For avoidance of doubt, this  
 20 includes source files, header files, resource files, library files, module definition files, map files,  
 21 object files, linker files, browse info files, and debug files. Source Code does not include  
 22 documents that describe source code or object code, such as hardware reference specifications,  
 23 software reference specifications, application programming interface ("API") specifications,  
 24 technical specifications, and other presentations about how source code or object code is built,  
 25

26  
 27 <sup>1</sup> Defendant served a subpoena on Third Party, IPP International UG ("IPP") for the computer source code at issue  
 28 in this case (the "Source Code"); however, IPP is merely a licensee of the subject Source Code from GuardaLey,  
 LTD, ("GuardaLey"), and does not have the legal right to produce it. GuardaLey is the exclusive owner of all rights  
 to the Source Code and has not been subpoenaed in this case to produce the Source Code. Nevertheless, GuardaLey  
 has offered to produce the Source Code under the terms of this Stipulated Protective Order Regarding Source Code.

1 organized, engineered, designed or developed, except to the extent that any such document  
 2 incorporates source code and/or object code, in which case that portion of such document  
 3 qualifies as Source Code.

4 3. "CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY  
 5 INFORMATION" hereinafter shall mean material that constitutes or contains Source Code.

6 4. All CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY  
 7 INFORMATION shall be carefully and securely maintained by the Receiving Party and access  
 8 to such shall be permitted only to persons having access thereto under the terms of this Protective  
 9 Order. CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY INFORMATION  
 10 shall be stored at the offices or facilities of the Receiving Party only consistent with the terms of  
 11 this Protective Order. In the event that any SOURCE CODE QUALIFIED PERSON ceases to be  
 12 engaged in the litigation of this Action, access by such person to CONFIDENTIAL SOURCE  
 13 CODE — ATTORNEYS' EYES ONLY INFORMATION shall be terminated. The provisions of  
 14 this Protective Order, however, shall otherwise remain in full force and effect as to such  
 15 SOURCE CODE QUALIFIED PERSON. If any provision of this protective order is violated by  
 16 the SOURCE CODE QUALIFIED PERSON, DEFENDANT or its agents, the source code  
 17 review shall be immediately canceled.

18 5. SOURCE CODE QUALIFIED PERSONS as used herein shall include any  
 19 SOURCE CODE QUALIFIED CONSULTANT AND EXPERT. The designated SOURCE  
 20 CODE QUALIFIED CONSULTANT AND EXPERT shall be DR. KAL TOTH and J. CURTIS  
 21 EDMONSON, counsel for the Receiving Party.

22 6. A proposed SOURCE CODE QUALIFIED CONSULTANT AND EXPERT may  
 23 only receive CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY  
 24 INFORMATION after being expressly identified to the Producing Party by the service of a  
 25 completed Exhibit A as seeking access to CONFIDENTIAL SOURCE CODE —  
 26 ATTORNEYS' EYES ONLY INFORMATION. A Producing Party shall have fourteen (14)  
 27 calendar days from the date of facsimile or electronic mail service of the materials and  
 28 information served, plus three (3) additional calendar days if service is made by U.S. mail or

overnight delivery (such as Federal Express), to object to a proposed Qualified Consultant or Qualified Expert other than the person designated in Section 5 herein. Such objection must be for good cause, stating with particularity the reasons for the objection, and must be in writing served on all Parties. Failure to object within the period referenced in this Paragraph shall constitute approval but shall not preclude the non-objecting Party from later objecting to continued access upon becoming aware of information of which the Producing Party was previously unaware supporting a basis for objection. If a written notice of objection is served, no disclosure or no further disclosure shall be made to the proposed Qualified Consultant or Qualified Expert until the objection is resolved by agreement or by an order of the Court.

7. The Producing Party objecting to the disclosure bears the burden of seeking an order of the Court and must demonstrate under applicable law why the proposed Qualified Consultant, or Qualified Expert should not be permitted to receive CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY INFORMATION. The objecting Producing Party must seek an order of the Court within fourteen (14) calendar days of serving its objection. Failure to seek an order of the Court shall constitute approval but shall not preclude the non-objecting Party from later objecting to upon becoming aware of information of which the Producing Party was previously unaware supporting a basis for objection.

8. The failure of a Producing Party to object to the receipt of its CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY INFORMATION by a person designated by a Receiving Party shall in no way prejudice the Producing Party's right to later move to exclude such person's testimony or written report on grounds other than the propriety of such person's access to the Producing Party's CONFIDENTIAL SOURCE CODE — ATTORNEYS' EYES ONLY INFORMATION.

9. CONFIDENTIAL SOURCE CODE — ATTORNEY'S EYES ONLY INFORMATION shall be subject to the additional protections of this Paragraph.

- a. Nothing in this Protective Order shall obligate the Parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.

- 1           b. Access to Source Code will be given only to SOURCE CODE QUALIFIED  
2           PERSONS.
- 3           c. Access to Source Code shall be provided on one “stand-alone” computer (that  
4           is, the computer may not be linked to any network, including a local area  
5           network (“LAN”), an intranet, or the Internet and may not be connected to any  
6           printer or storage device other than the internal hard disk drive of the  
7           computer) (such configured computer is hereinafter referred to as the “Secure  
8           Computer”). The Secure Computer shall be kept in a secure location at the  
9           offices of the Producing Party’s Local Legal Counsel’s office or at such other  
10          location as the Producing and Receiving Parties mutually agree (the  
11          “Inspection Room”). The Party’s agree that a suitable “Inspection Room” is  
12          the Law Offices of J. Curtis Edmondson, located at 3699 NE John Olsen Ave.  
13          The Secure Computer may be password protected and shall have the Source  
14          Code stored on a hard drive contained inside the Secure Computer. The  
15          Producing Party shall produce Source Code in computer searchable format on  
16          the Secure Computer or shall deliver the same electronically or on portable  
17          media for exclusive loading onto the Secure Computer. The Secure Computer  
18          shall, at the Receiving Party’s request, include reasonable analysis tools  
19          appropriate for the type of Source Code. The Receiving Party shall be  
20          responsible for providing the tools or licenses to the tools that it wishes to use  
21          to the Producing Party so that the Producing Party may install such tools on the  
22          Secure Computer. The Secure Computer shall include a printer of  
23          commercially reasonable speeds which may be provided by the Receiving  
24          Party. The Receiving Party may make hard copy print outs from the printer  
25          connected to the Secure Computer at the time of review. Absent written  
26          agreement of the Producing Party, or Court order, no more than fifty (50) total  
27          pages of the Source Code shall be printed or requested by the Receiving Party  
28          (font size 12, font Times New Roman). At end of each day, Producing Party

1 shall collect the printouts made by the Receiving Party and shall Bates label  
2 and produce copies of the printouts to Receiving Party within a reasonable  
3 time. Notwithstanding the foregoing, the Parties herein agree the Receiving  
4 Party may print more than 50 pages; provided, however, (i) that access to the  
5 printed pages will be limited to only the SOURCE CODE QUALIFIED  
6 PERSONS, (ii) access will be limited to only the location of the Secure  
7 Computer, and (iii) the SOURCE CODE QUALIFIED PERSONS must either  
8 deliver all printed pages to counsel for the Producing Party or certify that all  
9 printed pages have been destroyed when the case is ends.

10 d. The Receiving Party shall make reasonable efforts to restrict its requests for  
11 access to the Secure Computer to normal business hours, which for purposes of  
12 this Paragraph shall be 9:00 a.m. through 5:00 p.m. Upon reasonable notice  
13 from the Receiving Party, which shall not be less than three (3) business days  
14 in advance, the Producing Party shall make reasonable efforts to accommodate  
15 the Receiving Party's request for access to the Secure Computer outside of  
16 normal business hours. The parties reserve their rights to request access to the  
17 Source Code at the site of any deposition, hearing or trial.

18 e. All SOURCE CODE QUALIFIED PERSONS who will review Source Code  
19 on behalf of a Receiving Party shall be identified in writing to the Producing  
20 Party at least seven (7) business days in advance of the first time that such  
21 person reviews such Source Code. At the request of the Receiving Party, the  
22 Producing Party shall provide these individuals with information explaining  
23 how to start, log on to, and operate the Secure Computer in order to access the  
24 produced Source Code on the Secure Computers.

25 f. No person other than the Producing Party may alter, dismantle, disassemble or  
26 modify any Secure Computer in any way, or attempt to circumvent any  
27 security feature of any Secure Computer.  
28

1           g.     SOURCE CODE QUALIFIED PERSONS may not use cellular telephones,  
2                 tablets, cameras, laptop computers and/or similar devices, USB Sticks and  
3                 other Storage devices in the Inspection Room. The Producing Party shall make  
4                 reasonable efforts to provide a separate room where SOURCE CODE  
5                 QUALIFIED PERSONS may use these devices during their inspection of the  
6                 Source Code.

7           h.     Hard copy printouts of Source Code shall be maintained by the Receiving  
8                 Party's Local Counsel or by SOURCE CODE QUALIFIED PERSONS in a  
9                 secured locked area. The Receiving Party may also temporarily keep the print  
10                outs at: (i) the Court for any proceedings(s) relating to the Source Code, for the  
11                dates associated with the proceeding(s); (ii) the sites where any deposition(s)  
12                relating to the Source Code are taken, for the dates associated with the  
13                deposition(s); and (iii) any intermediate location reasonably necessary to  
14                transport the print outs (e.g., a hotel prior to a Court proceeding or deposition).  
15                No further hard copies of such Source Code shall be made and the Source  
16                Code shall not be transferred into any electronic format or onto any electronic  
17                media except that: 1. The Receiving Party is permitted to make the number of  
18                copies required for use in connection with a Court filing, hearing, or trial —  
19                taking into account the Court's procedural requirements and the needs of the  
20                Court, counsel, and any applicable witness to see the exhibits — and of only  
21                the specific pages deemed in good faith to be reasonably necessary for  
22                deciding the issue for which the portions of the Source Code are being filed or  
23                offered. To the extent portions of Source Code are quoted in a Court filing,  
24                either (1) the entire document will be stamped and treated as CONFIDENTIAL  
25                SOURCE CODE — ATTORNEY'S EYES ONLY INFORMATION; or (2)  
26                those pages containing quoted Source Code will be separately stamped and  
27                treated as CONFIDENTIAL SOURCE CODE — ATTORNEY'S EYES  
28                ONLY INFORMATION; 2. Electronic copies of Source Code printouts may

1 be made only as necessary to create documents which, pursuant to the Court's  
2 rules, procedures and order, must be filed or served electronically.

3 i. Nothing in this Protective Order shall be construed to limit how a Producing  
4 Party may maintain material designated as CONFIDENTIAL SOURCE CODE  
5 — ATTORNEY'S EYES ONLY INFORMATION.

6 j. Counsel for the Receiving Party with custody of CONFIDENTIAL SOURCE  
7 CODE — ATTORNEY'S EYES ONLY INFORMATION shall maintain a  
8 source code log containing the following information: (1) the date and time  
9 access CONFIDENTIAL SOURCE CODE — ATTORNEY'S EYES ONLY  
10 INFORMATION began and ended; (2) the identity of the person or people  
11 accessing the source code; and (3) the location the CONFIDENTIAL  
12 SOURCE CODE — ATTORNEY'S EYES ONLY INFORMATION was  
13 accessed from. Counsel for the Receiving Party will produce, upon request,  
14 each such source code log to the Producing Party within sixty (60) days of the  
15 final determination of this Action.

16 10. Any person who obtains, receives, has access to, or otherwise learns, in whole or in  
17 part, CONFIDENTIAL SOURCE CODE — ATTORNEY'S EYES ONLY INFORMATION  
18 herein shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any  
19 patent application, reexamination procedures, or reissue procedures, or write code, source code,  
20 develop or design software and computer programs relating to the CONFIDENTIAL SOURCE  
21 CODE — ATTORNEY'S EYES ONLY INFORMATION.

22  
23 SO STIPULATED  
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Respectfully submitted July 3, 2019.

**NEWMAN DU WORS LLP**

**EDMONDOSN IP LAW**

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Counsel for Plaintiff/Counterclaim Defendant  
Strike 3 Holdings, LLC

Counsel for Third-Parties, IPP International  
UG, and GuardaLey LTD

**IT IS SO ORDERED**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

Honorable Thomas S. Zilly  
United States District Court Judge

**EXHIBIT A**

**QUALIFIED CONSULTANT OR QUALIFIED EXPERT**

I, \_\_\_\_\_, declare under  
penalty of perjury that:

My address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My present employer is \_\_\_\_\_, and the address  
of my present employment is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My present occupation or job description is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I have attached hereto my current curriculum vitae and, to the best of my knowledge, a  
complete list of any present or former relationships or engagements between myself and any  
Party to the above-captioned action (the "Action") or any known competitor thereof.

I hereby acknowledge that I have read the "Protective Order Regarding Source Code"  
("PROTECTIVE ORDER") in this Action, that I am familiar with the terms thereof, and that I  
agree to be bound by the terms thereof.

1 I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
2 information designated as CONFIDENTIAL SOURCE CODE — ATTORNEY’S EYES ONLY  
3 INFORMATION (collectively, “DESIGNATED INFORMATION”) in this Action, and certify  
4 my understanding that such information is provided to me pursuant to the terms and restrictions  
5 of the PROTECTIVE ORDER. I agree not to reveal any DESIGNATED INFORMATION or  
6 any notes containing DESIGNATED INFORMATION to anyone not authorized to receive such  
7 information pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use, directly  
8 or indirectly, or allow the use of any DESIGNATED INFORMATION for any purpose other  
9 than directly associated with my duties in this litigation.

10 I understand that I am to retain all copies of the materials that I receive which have been  
11 designated as containing or reflecting DESIGNATED INFORMATION in a container, cabinet,  
12 drawer, room or other safe place in a manner consistent with the PROTECTIVE ORDER. I  
13 understand that all copies of any such materials are to remain in my custody until the Conclusion  
14 of this Action or the completion of my assigned duties, whereupon the copies are to be destroyed  
15 or returned to the Producing Party. Such return or destruction shall not relieve me from the  
16 obligations imposed upon me by the PROTECTIVE ORDER. I also agree to notify any support  
17 personnel (such as paralegals, administrative assistants, secretaries, clerical and administrative  
18 staff) that they may not access CONFIDENTIAL SOURCE CODE — ATTORNEY’S EYES  
19 ONLY INFORMATION pursuant to the terms of the PROTECTIVE ORDER.

20 I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
21 District of Nevada in any proceeding relating to my performance under, compliance with, or  
22 violation of the PROTECTIVE ORDER.

23  
24 Signature: \_\_\_\_\_  
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